

OFFICE OF THE
ATTORNEY GENERAL

DON SIEGELMAN
ATTORNEY GENERAL
MONTGOMERY, ALABAMA 36130
(205) 261-7400



STATE OF ALABAMA

FEB 17 1989

89-00182

Honorable Michael A. Figures
Member, State Senate
Figures, Jackson and Harris
2317 St. Stephens Road
Mobile, AL 36617

Water and Sewer Boards - Boards
of Directors - Term of Office -
Offices and Officers

Code of Alabama 1975,
§ 11-43C-92, read in conjunc-
tion with § 11-50-342, does not
require that appointments to
water and sewer boards be made
by council districts.

Dear Senator Figures:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTION

Does Code of Alabama 1975, § 11-43C-92
require that appointments by the Prichard
City Council to the Prichard Water and Sewer
Board be made by council districts?

FACTS AND ANALYSIS

In the opinion request you state the following:

The Prichard City Council requests your
opinion as to the legality of certain
appointments made to the Water and Sewer
Board of the City of Prichard (hereinafter
referred to as the board) vis-a-vis
Ordinance Number 1693(a), which was adopted
pursuant to Section 92 of the Prichard City
Government Act and is codified as
§ 11-43C-92, Code of Alabama 1975,
Recompiled, 1975.

The council makes all appointments to the five-member board. The current council has made the following appointments to fill vacancies on the board:

Mrs. Carvine Langham - black female
Councilman John Forister - white male
Mr. Jack Wims - black male
Mr. Charles Sims - black male

Mrs. Langham, Councilman Forister and Mr. Wims were all appointed on October 11, 1988, and prior to the enactment of Ordinance No. 1693 which was adopted on November 22, 1988. Mr. Sims replaced Mr. Wims and received his appointment on January 3, 1989. The other two members of the board who were appointed by the prior city council are Stanley Brooks, a black male, and L. W. Register, a white male.

Although the law under which the board was established, § 11-50-310, et seq., does not require that appointments of board members be made according to city council districts, the council has raised the question several times of whether § 11-43C-92 might be construed to require, inter alia, appointments by districts.

We would further like to know whether the appointment of Mr. Charles Sims to the Prichard Water and Sewer Board, considering past council appointments and the current composition of the board, violates § 11-43C-92.

We have been informed that Prichard is a Class 5 municipality. Code of Alabama 1975, § 11-43C-1 provides that Chapter 43C of Title 11 shall apply to any Class 5 municipality within the state. Moreover, § 11-43C-5 states that if a majority of the qualified electors in such a municipality vote in favor of a mayor-council form of government, then § 11-43C-92, among other sections of Title 11, Chapter 43C, shall be applicable.

Section 11-43C-92(a) provides that within thirty days of taking office, the officials of city government shall adopt an ordinance providing that all appointments made by the council

Honorable Michael A. Figures
Page 3

to positions in city boards shall "fairly and equitably reflect the make-up of the total community with due consideration given to all demographic characteristics of the population."

Prichard City Ordinance 1693, a copy of which you have attached with the opinion request, uses language identical to that set forth in § 11-43C-92(a), supra.

Additionally, you state that the Prichard Water & Sewer Board was established under Code of Alabama 1975, § 11-50-310, et seq. Section 11-50-342(a) provides that members of water and sewer boards created under § 11-50-341 are appointed by the city council.

We have carefully examined §§ 11-50-341 and 11-50-342, and § 11-43C-92, and have found no statutory language requiring that members of such a board be appointed by council districts.

It is therefore the opinion of this office that there is no statutory requirement that members of water and sewer boards created pursuant to § 11-50-341 be appointed by council districts.

CONCLUSION

Code of Alabama 1975, § 11-43C-92, read in conjunction with § 11-50-342, does not require that appointments to water and sewer boards be made by council districts.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General
By:



JEAN WILLIAMS BROWN
Assistant Attorney General

DS/JWB/jho
02390